
**United States District Court
District of New Hampshire**

**GUIDELINES
FOR
MEDIATION
PROGRAM**

January 1, 2002

1. Designation of Mediators

- (a) The chief judge shall designate ten (10) or more mediators under this rule.
- (b) An individual may be designated to serve as a mediator if he or she: (1) has been for at least ten (10) years a member in good standing of the bar of this court; (2) is determined by the chief judge to be competent to perform the duties of a mediator; and (3) has participated in a training program (or the equivalent thereof) to the satisfaction of the chief judge.
- (c) Each mediator shall, for the purpose of performing his or her duties, be deemed a quasi-judicial officer of the court.

2. Designation of Compliance Judge

The magistrate judge is designated to serve as the compliance judge for mediation. This compliance judge shall be responsible to the chief judge for administration of the mediation program established by this rule and shall entertain any procedural or substantive issues arising out of mediation. Complaints regarding the Alternative Dispute Resolution (ADR) process and requests for interpretation and/or enforcement of mediation rules, including ethical requirements, shall be made to the magistrate judge.

3. Compensation of Mediators

Each mediator shall be compensated \$175 per hour for service in each civil action referred to mediation, which compensation shall be divided equally

between/among the parties. Notwithstanding this provision, the court may request from each mediator up to six (6) hours of service each year without compensation.

4. Civil Actions Eligible for Mediation

Each judge or magistrate judge in the district may, without the consent of the parties, refer to mediation any civil actions. Notwithstanding the above, the parties in any civil action may agree to mediation and may select a mediator from the court's panel of mediators or from any noncourt source.

If counsel or any party believe the magistrate judge or any panelist should not be selected as the mediator because of conflict of interest or appearance of impropriety, the reason shall be promptly set forth by letter to the magistrate judge or district judge presiding on the case.

5. Mediation Procedure

- (a) Counsel and the parties in each civil action referred to mediation shall participate therein and shall cooperate with the mediator, who shall be designated by the compliance judge.
- (b) Whenever a civil action is referred to mediation the parties shall immediately prepare and send to opposing counsel and to the designated mediator, a position paper not exceeding ten (10) pages in length. The parties may append to their position papers essential documents only. Pleadings shall not be appended or otherwise submitted unless specifically requested by the mediator. In addition, a confidential position paper shall be provided solely to

the mediator which realistically assesses the case.

- (c) Counsel and the parties (including individuals with settlement authority or specific individuals) shall attend mediation sessions as requested by the mediator. Counsel and parties shall participate in good faith in all mediations whether the mediation was requested or ordered.
- (d) The mediator may meet with counsel and the parties jointly or *ex parte*. All information presented to the mediator shall, on request, be deemed confidential and shall not be disclosed by anyone, including the mediator, without consent, except as necessary to advise the court of an apparent failure to participate. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation shall be disclosed in any subsequent proceeding or construed as an admission.
- (e) No proceedings (including motion practice and discovery) shall be stayed upon referral to mediation except upon application. Any application for a stay of proceedings shall be made jointly by the parties and shall be considered by the referring judge or magistrate judge.

6. Ethical Standards for Mediators

- (a) Impartiality. A mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance. Impartiality implies a commitment to aid all parties, as opposed to an individual party, in moving toward an agreement.
- (1) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of proposed options for settlement.
- (2) A mediator shall withdraw from mediation if the mediator believes he or she can no longer be impartial.
- (3) A mediator shall not accept or give a gift, request, favor, loan, or any other item of value to or from a party, attorney, or any other person involved in and arising from any mediation process.
- (b) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.
- (1) A mediator must disclose to the parties and to the compliance judge any current, past, or possible future representation or consulting relationship with, or pecuniary interest in, any party or attorney involved in the mediation.

- (2) A mediator must disclose to the parties any close personal relationship or other circumstance, in addition to those specifically mentioned in subsection (b)(1) above, which might reasonably raise a question as to the mediator's impartiality.
- (3) The burden of disclosure rests on the mediator. All such disclosures shall be made as soon as practical after the mediator becomes aware of the interest or the relationship. After appropriate disclosure, the mediator may serve if all parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, the mediator shall withdraw irrespective of the expressed desires of the parties.
- (4) In no circumstance may a mediator represent any party in any matter during the mediation.
- (5) A mediator shall not use the mediation process to solicit, encourage, or otherwise incur future professional services with any party.

7. Admissions.

Mediation statements and documents will be destroyed after the mediation. Neither the mediation statements nor communications of any kind occurring during mediation shall be construed as an admission or be deemed admissible at trial.